

Report for:	Shadow Executive
Meeting Date:	10th March 2020

Title of Report:	Abbey Barn Lane Realignment (ABLR) – Decision to Award NEC 4 Early Contractor Involvement (ECI) Contract
Shadow Portfolio Holder	Mark Shaw / Transportation
Responsible Officer	Ian McGowan/ Ian Thompson
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Recommendations:	Delegation of authority to the Head of Highways Infrastructure Projects to enter into a NEC4 Option C (Target Cost) contract with Galliford Try through the Midlands Highways Alliance Framework for the Abbey Barn Lane Realignment (ABLR). This will initially only be for Early Contractor Involvement.
Corporate Implications:	This report aligns with the Medium Term Financial Plan for the new Buckinghamshire Council.
Options: (If any)	<ol style="list-style-type: none"> 1. <u>Do nothing.</u> In this situation the scheme would not progress through the ECI process which would result in a negative impact to the programme, potential impact on cost and loss of scheme benefits. 2. <u>Procure the contract via a tender process.</u> Through its involvement with the Midlands Highways Alliance (MHA), the County Council has established relationships with the framework's contractors including Galliford Try as the preferred regional supplier. While a tender process would not prohibit ECI, a new contractual arrangement and relationship would potentially be short term and need to be established with the successful bidder. This would impact resources and programme, without any certainty around performance. The MHA framework has well developed Key Performance Indicators (KPIs) to ensure contractors deliver high quality schemes; ECI encourages this further still, whereas a tender exercise would take time and resources, require careful selection, potentially of a new supplier, unfamiliar with the scheme and how the Council works and could be a short term relationship. 3. <u>Recommended Option: MHA Procurement Strategy – Direct Award contract on the MHA framework, via the Regional Call-Off – This is the recommendation based</u>

	<p>on the established working relationships the Council has with the Regional Contractor (Galliford Try) as well as established collaborative working undertaken through the early phases of project design.</p> <p>4. Award Design & Build contract via the SCAPE Civils Framework. The works to be undertaken at Abbey Barn Lane are already developed with AECOM (also through the MHA) having undertaken the preliminary design input. The work is regarded as too far progressed with AECOM as designer and also of too low value to award using this route.</p>
<p>Recommendation:</p>	<p>It is recommended that Option 3, to enter into an NEC4 Option C (Target Cost) contract is taken forward by the Project Team.</p>

1. Purpose of Report

This paper seeks approval by the Shadow Executive to enter into a contract (Initially for Early Contractor Involvement (ECI)) for the purpose of delivering the ABLR Project.

2. Content of Report

2.1 Background

The requirement for the ABLR has arisen from Wycombe District Council's decision to release five strategic development sites in the High Wycombe area, ahead of the production of a new Wycombe District Local Plan (WDLP). Jacobs were requested to assess transport impacts and identify a package of measures to enable growth associated with the development sites to be accommodated.

Two significant development sites are proposed to come forward in the vicinity of Abbey Barn Lane as a result of this, and modelling indicates that in 2026, the number of vehicle movements on Abbey Barn Lane will increase significantly as a result of background traffic growth, as well as development traffic.

The study identified measures that would address the demand created by the development:

- Reconfigure and introduce a roundabout at the Kingsmead Road / Abbey Barn Lane Road Junction
- Upgrade and widen the bridge south of Kingsmead Road on Abbey Barn Lane
- Widen and improve Abbey Barn Lane for approximately 500m

Currently the highway has limited capacity with a section of single lane carriageway over the old railway bridge, with poor visibility and vehicles frequently meeting on the bridge. The current junction with Kingsmead Road and Abbey Barn Road is a T-Junction with a sharp change of vertical and horizontal alignment approaching the give way line with Kingsmead Road.

2.2 Key Milestones (Based on Current Programme)



- Planning Submission - December 2020
- Construction Start – February 2022
- Construction Completion – October 2023
- HIF Funding Deadline – March 2023*

*The current programme shows that the HIF funding will be spent prior to the construction completion date.

2.3. Narrative setting out the reasons for the decision

- 2.31. Before starting the contract process advice was obtained from both the BCC Procurement Team and Legal Service's. The Procurement Team is aware of the MHA Medium Scheme Framework 3 and confirms it is in compliance with the Public Contracts Regulations 2015 and required Council Regulations. The service area will follow the rules of the framework and shall manage the contract effectively. The contract shall be sealed due to the value and the service area will fully comply with BCC's Contract Standing Orders. This contract will be added to the Contract Management Application. Legal advice recommended that formal approval from Shadow Executive is required before entering into a full NEC4 contract for the following reason. The decision may be considered a key decision as set out in the Council's Constitution, Article 13, and paragraph 13.3
- 2.32. Buckinghamshire County Council is a member of the Midlands Highways Alliance (MHA). This provides access to a procurement route which is compliant with the Council's procurement obligations and is an opportunity to maximise the benefits of Early Contractor Involvement (ECI). The ABLR project will be undertaken alongside and using the same project management approach and design & construction teams as the SEALR and ELR projects, which were both model projects under the Midlands Highways Alliance Medium Schemes Framework 3 (MSF3) competitive framework tendering process. This gave early sight and exposure of these projects to the wider construction industry to price, evaluate and determine value engineering opportunities with a goal to maximise the benefits to the Council in terms of quality, value engineering, value for money and social value.
- 2.33. The MHA's evaluation of its MSF1 & MSF2 major projects over the last 9 years demonstrates a proven track record of efficiency savings when a chosen contractor assists in the scheme delivery through ECI. MSF1 & 2 generated ECI savings of £23M via an average of 36 weeks ECI across all projects with £3.9M of gain share and £1.0M procurements savings.

2.4 Early Contractor Involvement has the following key benefits:

- Potential to save time and money by ensuring all parties undertaken collaboration to achieve the best project outcomes
- Contribute to the design process using past experience.
- Build a better team-working ethic to take forward into construction of the scheme.
- Introduce innovations such as building materials and construction processes
- Advise on buildability, sequencing, and construction risk. For example how best to ensure good traffic management.
- Advise on the selection of specialist contractors.

- Spend more time developing a construction strategy, recruiting staff, identifying partners and work collaboratively with the Council.
- Help develop the cost plan and construction programme to provide better cost certainty at an earlier stage of development.
- Help develop the method of construction.

2.5 In choosing the ECI route, the Contractor, Consultant and Client are responsible for compiling the target cost. The Contractor is required to demonstrate competition in their rates by market testing material supplies and sub-contractor costs. The Contractor is also required to bring their best ideas from working on similar highway schemes in order to generate significant savings.

2.6 The Council proposes to use the Midlands Highway Alliance Medium Schemes Framework 3 (MSF3). It has confirmed that it is entitled to access the Framework. The Council must satisfy itself that the proposed Framework was set up in compliance with the Public Contracts Regulations 2015 and EU principles of transparency, equality, fairness and non-discrimination in accordance with Order 7.2 (Standing Orders relating to Contracts).

2.7 The Council must also comply with the requirements of the Framework Agreement with regard to any criteria for award of a contract under the Framework. Contracts entered into under the Framework are based on NEC 4 contract.

2.8 The costs of the ECI for the ABLR project are estimated to be £250,000. Under Order 7.2, the procurement of 'Works' contracts under the Council's Orders will be subject to the Supplies and Services EU tender threshold. Therefore, as the value of the ABLR project (for the initial Early Contractor Involvement (ECI)) is above £181,302, the award of the contract is to be authorised by an Executive Director and S151 Officer (Order 14.3).

2.9 The Call-Off Contract must be sealed for the Council to benefit from a 12 years limitation period for Court action in accordance with Order 15.3.

2.10 The Council's proposal is to enter into an NEC4 ECI contract pursuant to the Framework for the appointment of an early contractor involvement (ECI) under a two-stage NEC4 contract. The NEC4 Guidance on the ECI Clauses states:

2.11 The notice to proceed to Stage Two is only issued once all necessary steps have been completed. This includes getting external approvals and consents, determining any changes to the Budget and agreement of the Stage Two Prices. The Project Manager is not able to fix the Prices if they are not agreed – in that event the work does not proceed and an alternative contractor would need to be found. **In addition, the Employer has the right to decide not to proceed with the works for any reason.**

2.12 If Stage Two is not to proceed, the Project Manager issues an instruction removing the Stage Two work from the Works Information. The instruction is not a compensation event; the Contractor is paid for all the work carried out in Stage One but receives no additional payment for not proceeding with Stage Two.

2.13 If the reason for not proceeding is because the Prices have not been agreed, or the performance of the Contractor is below a standard specified in the Works Information, an

average score across the project KPIs of less than 7.5 (excluding the *Contractor* scored KPI) within the MHA toolkit KPIs, the Employer is free to replace the Contractor with another contractor to carry out the work. If the work does not proceed for other reasons – for example consents have not been obtained – the Employer may proceed with the works at a later stage with another contractor once consents have been obtained if the appropriate entries have been made in the Works Information.”

Therefore, the Council is not contractually bound to proceed with the Stage 2 works under the ECI clauses of NEC4.

Value for Money (VfM) Self-Assessment

The aim of this decision is to ensure that best value is achieved in the design and planning of this major infrastructure project. ECI is an industry recognised practice that offers potentially substantial savings in the delivery of major highways projects as set out previously.

3 Legal and Financial Implications

3.1 The legal implications are contained within the contract. Other legal matters related to the project will be managed through the appropriate channels (eg any CPO arrangements required).

3.2 The current budget for the scheme was approved by the Strategic Transport Infrastructure Board in September 2019.

3.3 In February 2018 Homes England announced that Wycombe District Council had successfully secured £7.5M of funding in principal towards the Abbey Barn Lane Realignment scheme. The remaining approximately £3.7M funding is made up of: £0.5M of LTB funding via the LEP and approximately £3.2M of S106 contributions (of which £2.5M is secured and further funding is under negotiation). This will give total funds approx. £11.2M.

The current budget for the scheme is set out in the table below:

HIF – Housing Infrastructure Fund via Homes England	£7,500,000
S106	£3,155,742
Local Transport Board Funding (through the Local Economic Partnership)	£525,737
OVERALL TOTAL BUDGET	£11,181,478

3.4 The current cost of the scheme is estimated at £11,181,478. These costs have been derived from pro-rata equivalent schemes, cost planning from Galliford Try and quotations received from AECOM for the design element. Further work is being undertaken on costs and given the significant risk associated with this project, these costs are likely to change. A report will be provided to the new authority setting this out once ground conditions are known and a preliminary design is complete. This is set out in more detail in Section 4 of this report.

Cost item	Value
Development costs including Design, Planning and Business Case	£756,977
Land Costs (including Legal Fees and potential Post Scheme Compensation Claims)	£1,142,625
Construction Cost (including Supervision & Utilities)	£6,088,876
Risk and Optimism Bias	£2,643,000
Internal Staff Costs	£550,000
Total	£11,181,478

3.5 The current profile of budget vs expenditure is set out below:

	2019/20	2020/21	2021/22	2022/23	2023/24	Future Years	Total
Estimated cost	526	943	4,629	4,558	214	220	11,181
Funding sources							
LTB	526	0	0	0	0		526
HIF		693	4,879	1,928			7,500
Developer funding*	-	250	-250	2,630	214	220	3,155
Total Funding	526	943	4,629	4,558	214	220	11,181

The above table illustrates the cost of the scheme against income. £7.5M of HIF funding has been confirmed. The remainder of the scheme will be funded through £0.526M LTB and S106 contributions. £2.5M of S106 has been confirmed and agreed with developers at Abbey Barn South Development. A further S106 contribution from Abbey Barn North is being negotiated.

4 Other Key Risks

4.1 Funding – Of the Approx. £3.2M S106 funding, £2.5M has been secured. Approx £0.7M has yet to be secured for this project and is dependent on Planning Approval for the Abbey Barn North development (seeking permission in approx. Dec 2020). There is the risk that this funding is not secured or secured to the same timescale as the project. However WDC have allowed for forward funding to mitigate this risk, and as such it is accounted for within the existing finance proposals of Buckinghamshire Council.

4.2 Ground Conditions / Potential Design Changes – if the earthworks require installation of structures, a change in alignment (based on earthworks / ground conditions, or environmental constraints), or if infiltration is not a viable surface water drainage solution then the project cost could increase. A Short Form Contract, approved by S151 officer, in line with the Spending Protocol, has been entered into, to enable Ground Investigation Surveys to be undertaken. This will enable the design alignment and suitable mitigation to be understood. The site topography is complex and a range of delivery options will be put forward. This could have substantial cost implications on the project. Further funding is being sought to cover this potential increase (such as increased S106 contribution from Abbey Barn Lane North). The results of the ground condition work are expected in April 2020.

4.3 HIF Timescales - The HIF Funding is conditional on the funding being spent by March 2023. The current programme shows complete delivery of the scheme in October 2023, and so the use of the HIF funding has been prioritised, and is expected to be fully used prior to March 2023. ECI will help inform the design and advise if the programme can be brought forward.

5 Dependencies

5.1 This paper only relates to release of contract which has no interdependencies at this stage. The decision to progress to construction is dependent on the outcome of the ground investigation work as, if this identifies very poor ground conditions costs could escalate above the funding available. Interdependencies of the whole project continue to be identified and managed by the Project Team.

6 Consultation

6.1 Local Members and Members of the Cabinet have been regularly updated on progress of the scheme.

Cllr Mark Shaw – Cabinet Member for Transportation has been informally briefed on the scheme, its issues and risks

Informal Consultation has occurred with Cllr Julia Wassall regarding the Ground Investigation surveys.

WDC are consulting with their Members appropriately

Public consultation will be developed and undertaken as part of the Preliminary Design Phase of this scheme with all affected parties to help develop the scheme proposal.

7 Equalities Implications

7.2 All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010.

7.3 An Equalities Impact Assessment is being discussed with WDC for this scheme. However at this stage it is not considered that any group with protected characteristics are adversely affected under the Equality Duty, further analysis will be undertaken when a construction programme is available.

8 Data Privacy Implications

8.1 Contracting bodies will conform with Data Protection requirements as per their framework contracts. Local Authority staff will operate using the centrally available guidance.



9 Next Steps

9.1 If awarded, work will proceed in developing the following stages of the project:

- Award of Contract for ECI works to Galliford Try under the regional call-off of the MHA Framework.
- Delivery of the already commissioned Planning Submission, Preliminary Design and Detailed Design via AECOM, also via the MHA Framework, with Galliford Try offering ECI including buildability support, programming and project estimation advice as set out in 2.34.

